

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE CHRYSLER-DODGE-JEEP  
ECODIESEL MARKETING, SALES  
PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION.

Case No. 17-md-02777-EMC

**ORDER RE SUPPLEMENTAL  
BRIEFING AND/OR EVIDENCE**

Docket Nos. 487, 484-86

The Court has reviewed the Private Plaintiffs' motion for preliminary approval as well as the proposed consent decree with the United States and the consent decrees with California. Having reviewed these filings, the Court hereby orders the parties to file supplemental briefing and/or evidence on the following issues. The papers shall be filed no later than January 18, 2019, at 10:00 a.m. A joint submission is strongly preferred.

**I. CONSENT DECREES**

With respect to the proposed consent decree with the United States, the parties shall address whether the Federal Register Notice has already been published and, if so, when it was published, when the comment period will be over, and how long thereafter the federal government will need to review the comments and respond or take action (if necessary).

**II. SETTLEMENT WITH PRIVATE PLAINTIFFS**

A. Class Definition

The class is defined as "all Persons . . . who (1) on January 12, 2017 owned or leased [a Class Vehicle]; or who (2) between January 12, 2017 and the Claim Submission Deadline for Eligible Owners and Eligible Lessees become the owner or lessee of [a Class Vehicle]; or who (3)

own or lease [a Class Vehicle] . . . at the time of participation in the Repair Program.”<sup>1</sup> Sett. Agmt. ¶ 2.19. There are also several exclusions from the class – *e.g.*:

- “Owners or lessees who acquired [a Class Vehicle] after January 12, 2017, and transferred ownership or terminated their lease before April 1, 2019”;
- “Owners or lessees who acquired [a Class Vehicle] after January 12, 2017, and transferred ownership or terminated their lease after April 1, 2019, as a result of a total loss, but before the Claim Submission Deadline for Eligible Owners and Eligible Lessees”;
- “Owners who acquired an Eligible Vehicle on or before January 12, 2017, and transferred ownership after January 10, 2019, but before April 1, 2019, unless ownership was transferred as a result of a total loss”;
- “Lessees who leased their [Class Vehicles] on or before January 12, 2017, acquire ownership after January 10, 2019, and transfer ownership before the AEM is performed on the Eligible Vehicle.”

Sett. Agmt. ¶ 2.19(a)-(d). The parties shall state the rationale for the exclusions in ¶ 2.19(a)-(d).

In addition, the parties shall address whether Authorized Dealers are part of the class. Although it is clear that the class includes dealers who are not Authorized Dealers, *see* Sett. Agmt. ¶ 2.19, it is not clear whether the class also includes Authorized Dealers. *See* Sett. Agmt. ¶ 2.19 (defining class as “all Persons”); Sett. Agmt. ¶ 2.57 (defining “Persons” as “individuals and entities such as an automobile dealer that is not an Authorized Dealer”).

#### B. Predominance

The parties shall address whether *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679 (9th Cir. 2018), currently under review en banc, poses any concern for the settlement. *See id.* at 702 (holding that the district court erred “by failing to make a final ruling [in the context of approval of a class action settlement] as to whether the material variations in state law defeated

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<sup>1</sup> This definition departs from the simple class definition in the operative complaint. *See* Docket No. 310 (SAC ¶ 258) (defining the nationwide class at least as “[a]ll persons or entities in the United States . . . that purchased or leased a Class Vehicle”).

predominance under Rule 23(b)(3)").

C. Individual Release

In addition to the "Class Release" at ¶ 9.3, there is also an "Individual Release" at ¶ 9.7. *See* Sett. Agmt. ¶ 9.7; Sett. Agmt., Ex. 5 (Individual Release). The parties shall explain what the purpose of the Individual Release is – *e.g.*, why there is a provision for an Individual Release in addition to the "normal" release. The Court seeks this information because the Individual Release "remain[s] valid even if the Final Approval Order is later reversed and/or vacated on appeal." Sett. Agmt. ¶ 2.61.

D. Deadline to Opt Out or Object

The opt-out/object deadline is set for April 1, 2019. However, if preliminary approval and class notice is delayed, the period between notice and opting out/objecting should be no less than 60 days.

E. Means to Opt Out

It appears that, even though claims may be made electronically, opt outs cannot be. *See* Sett. Agmt. ¶ 6.1 ("[T]o opt out validly from the Class, a Class Member must personally sign (electronic signatures, including Docusign, are invalid and will not be considered personal signatures) and send a written request to opt out . . . to the Claims Administrator . . . at an address to be provided by Fiat Chrysler."). The parties shall address whether it is possible to accommodate some kind of electronic opt out.

F. Claim Form

The parties shall submit a claim form for the Court's review.

G. Means of Notice to the Class

For notice by U.S. mail, the parties shall address whether there are additional means beyond, *e.g.*, skip tracing to secure addresses for persons whose notices are returned as undeliverable. For example, can the parties use VINs and DMV information to obtain addresses?

For notice by email, the parties shall address whether there are means to determine how many of the emails are actually received, read, and/or not put into a junk or spam folder.

Finally, the parties shall address whether there may be additional means of notice not

addressed in the papers – e.g., posting on the FCA Defendants’ website, posting at Authorized Dealers or Authorized Servicers, etc.

#### H. Short-Form Notice

The current language of the short-form notice is problematic in that it should contain information on the amount of fees requested; also, it does not make clear that one who objects is still considered a member of the class and must submit a claim or he/she will get nothing.

#### I. Long-Form Notice

*Page 1.* The long-form notice should begin the same way as the short-form notice (although all should be in bold) – i.e., (1) stating that “You are receiving this notice as an owner, former owner, lessee, or former lessee” of a Class Vehicle” and “[y]ou may be eligible for cash benefits under a class action settlement and (2) providing a chart of the “Settlement Benefits” (get paid cash, get your vehicle fixed, receive a comprehensive extended warranty).

*Page 2, “Attorney’s Fees.”* This paragraph should state the fee amount being requested.

*Page 3, Question 2.* In the last paragraph, can persons also ask questions via email?

*Page 6, Question 4.* The chart currently describes January 10, 2019, as the “announcement date.” The description should read instead “date of settlement announcement” or “date that settlement was announced”).

*Page 8, Question 7.* With respect to the last paragraph, how will class members who purchased vehicles after the opt-out date (April 1, 2019) get notice such that 30 days is sufficient?

*Page 18, Question 30.* The first paragraph should be broken into two paragraphs. The last sentence should become the first sentence of the second paragraph. In addition, a sentence should be added to the end of the first paragraph: “**Even if you make an objection, you must also submit a claim in order to get any benefits under the settlement, including monetary compensation.**”

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*Page 20, Question 35.* In the first paragraph, can persons also ask questions via email?

Dated: January 15, 2019

  
EDWARD M. CHEN  
United States District Judge